

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
WASHINGTON, D.C.

Motion of

UNITED PARCEL SERVICE CO.

for confidential treatment of documents  
under Rule 39 of the Rules of Practice  
of the Department of Transportation  
14 C.F.R. 302.39

Docket OST-95-125

MOTION OF  
UNITED PARCEL SERVICE CO.  
FOR CONFIDENTIAL TREATMENT PURSUANT TO RULE 39

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April 30, 2009

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Docket 48732

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FOR CONFIDENTIAL TREATMENT PURSUANT TO RULE 39

United Parcel Service Co. ("UPS") hereby submits this motion to withhold from public disclosure, certain information contained in UPS's Schedule B-7, Airframe and Aircraft Engine Acquisitions and Retirements Report, for the period ending March 31, 2009, submitted herewith under seal, pursuant to Rule 39 of the Rules of Practice of the Department of Transportation ("DOT"). UPS believes that the information contained in its Schedule B-7 report is confidential and commercially-sensitive data, the premature public disclosure of which would cause substantial injury to UPS. UPS requests that the data at issue be withheld from public disclosure for a period of ten (10) years. In support of this motion, UPS states as follows:

1. The data filed today is pursuant to Part 241 of the DOT's economic regulations. The great majority of UPS's Part 241 filings are submitted as public documents, available for inspection and copying by members of the public, including foreign and domestic competitors of UPS.

2. A small portion of the information required to be filed pursuant to Part 241 is of a commercially sensitive and confidential nature. In this case, certain price and cost data contained in UPS's Schedule B-7, are highly sensitive and confidential. Public disclosure of these data would have an adverse financial impact on UPS. Withholding the data from public disclosure is consistent with the Freedom of Information Act (5 U.S.C. 552) (the "FOIA"), and precedents thereunder.

3. The reasons why these cost and price data are commercially sensitive to a degree which require they be withheld from public disclosure are as follows:

Disclosure of the data diminishes competition among the major aircraft manufacturers;

Disclosure of the data impairs competition in the international arena, because United States airlines are required to reveal major elements of their cost structures when their foreign competitors are not; and

The Securities and Exchange Commission has determined that these data should be withheld from public disclosure.

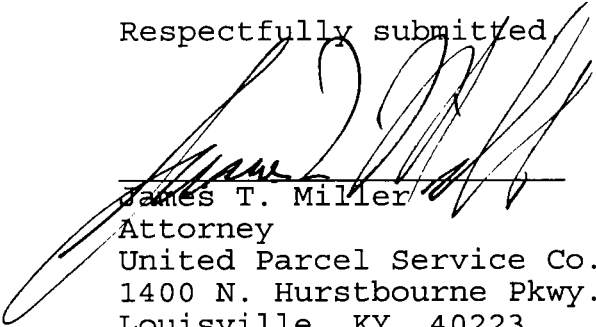
4. Accordingly, the data should be withheld from public disclosure by the DOT, pursuant to Exemptions 3 and 4 of the FOIA (5 U.S.C. 552(b)(3) and (4)).

5. Under Exemption 3 of the FOIA, information in agency records may be withheld if it is specifically exempted from disclosure by a statute, provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding, or refers to particular types of matters to be withheld." Section 1104 of the Federal Aviation Act (49 U.S.C. 1504), is exactly the type of statute to which Exemption 3 refers, because Section 1104 requires that information be withheld by the DOT if its release would "adversely effect the competitive position of any carrier in foreign air transportation." As set forth above, the data would have exactly this adverse effect.

6. Under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), information in agency records may be withheld that is "commercial or financial information obtained from a person and privileged or confidential." As set forth above, these data are of precisely this nature. See National Parks and Conservation Association v. Morton 498 F.2d 765, 769 (D.C. Cir. 1974).

WHEREFORE, United Parcel Service Co. respectfully moves that the Department of Transportation withhold the attached, sealed data from public disclosure for a period of ten (10) years pursuant to Rule 39 of the Department of Transportation's Rules of Practice, and to grant such other and further relief as may be deemed just and necessary.

Respectfully submitted



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